

December 17, 2012

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VIA E-MAIL and HAND DELIVERY

Michael B. Spicer
CPO
Information Technology
Management Office
1201 Main Street, 4th Floor
Ste. 430
Columbia, SC 29201

Re: Protest of Award of Solicitation 5300004448 to provide Comprehensive Individual Education Program (IEP) Case Management Solution to Excent Corporation

Dear Mr. Spicer:

This Firm represents Public Consulting Group, Inc. (PCG) in the protest of Solicitation 5400003804 (RFP) and the Information Technology Management Office's decision to issue its November 30, 2012 Intent to Award to Excent Corporation (Excent). On December 10, 2012, Amy W. Smith, Manager, filed a protest letter with you. Pursuant to S.C. Code Ann. § 11-35-4210(2), we are filing this amended protest which supersedes the grounds set forth in the December 10, 2012 protest.

The protest is based on the grounds that:

EVALUATION COMMITTEE SCORING

1. The evaluation committee's scoring regarding Phase I of the proposals of Excent, CORE and PCG, as demonstrated in the "Evaluator Explanation Summary" sheets, is contrary to S.C. Code Ann. § 11-35-2410 and the rankings of Excent, CORE and PCG is clearly erroneous, arbitrary and capricious or contrary to law. Each of the grounds in paragraphs 2 through 5 below are incorporated herein demonstrating that the scoring and ranking of PCG was in violation of § 11-35-2410. Examples contained in the Evaluators' Explanation Summary sheets of the arbitrary, capricious nature of the scoring include:

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- a. In evaluating CORE, evaluators stated that the pricing breakdown was unclear;
 - b. In evaluating Excent, credit was given to the fact that Excent was the incumbent vendor and conversion would be easier. This is not an evaluation factor. Additionally, what is included in "everything" in pricing in following years is "unclear";
 - c. In evaluating PCG, evaluators stated that is unclear how PCG's system integrates with PowerSchool or that the system is limited by PowerSchool. The evaluators misapprehended the PCG proposal and the fact that its system is fully compliant with PowerSchool and the PCG solution is not limited by PowerSchool; and
 - d. In spite of the admitted issues upon which the evaluators were demonstrably unclear, they proceeded to evaluate and score the proposals without asking the procurement officer to seek clarification.
2. The procurement officer and/or the evaluation committee did not clarify the offerors' proposals, as authorized by the RFP, S.C. Code Ann. § 11-35-1520(8) and Reg. 19-445-2095 sufficiently, resulting in the committee members scoring the offerors' proposals on incomplete information and/or speculation or on factors that were not evaluation criteria resulting in the committee members misapprehending and consequently underscoring the PCG proposal. Further, the failure to seek clarification to ensure that the offerors have a full understanding can result in there not being a meeting of the minds which can result in a contract ambiguity and the contractor not being bound to meet the RFP contractual requirements as noted under the protest grounds regarding Excent's non-responsiveness to the RFP.
3. Phase 1: Criteria 1 Proposed Solution (Technical Proposal)
 - a. The evaluators each misunderstood or did not comprehend the design of PCG's technical proposal, including the connectivity and platform and browser compatibility;
 - b. PCG offered a fully compliant IEP system and the 750 hours was in addition to the fully compliant system offered by PCG. The evaluators clearly misapprehended the proposal, which resulted in PCG being scored artificially low;
 - c. The evaluation committee reduced PCG's score on the ground that the platform and web browser are dated/outdated. This is an incorrect statement. The proposed system has no limitation on current browser availability. As long as the system proposed by PCG meets or exceeds all of the RFP technical

requirements, the "look" of the platform, e.g., whether it is the newest, is not an appropriate evaluation criterion;

- d. Each of the evaluators stated to the effect that they had concerns about the T1 speed connectivity. The PCG proposal does not mention or reference T1 use. PCG provides the system to which end users, be they LEA, Department or other end users connect. The speed of connectivity is solely in the province of the end user;
- e. On information and belief, the proposals were not scored independently which resulted in an undue influence on the evaluation committee members and skewed the scoring and resulting ranking; and
- f. The arbitrary, capricious and clearly erroneous nature of the evaluation Phase 1 scoring and the fact that the evaluation committee members did not understand the PCG proposal is clearly demonstrated by the ranking of PCG in the Phase 2 scoring vis-a-vis the Phase 1 scoring.

4. Phase 1: Criteria 2 Price Proposal

- a. The evaluation committee members did not apply the same scoring standards to PCG, Excent and CORE in scoring the offerors' respective pricing proposals;
- b. Evaluators misapprehended the PCG solution. Scoring does not comport with the evaluation criteria contained in the requirement. By way of example:
 - i. Evaluators state "costs could increase drastically if law changes and major development needed," yet the RPF calls for a "fixed price" over the term of the contract. PCG's pricing proposal included the provision of all mandated federal changes within its fixed fee price; and
 - ii. Evaluators concerned with PCG's request that "all documents be provided in first three weeks" and, that if documents are not provided within this time frame the price could go up, is contrary to the RPF requirement for a "fixed price" over the term of the contract.
- c. The evaluation committee reduced PCG's score because PCG's solution used Paperclip, which use was limited to 15 GB per month, apparently on the basis that the cost might be increased if the end users used more than 15 GB per month. The number of GB offered as part of PCG's fixed price meets or exceeds the needs in the RFP for the term of the contract and any extensions thereof. On

information and belief, the evaluators made no effort to determine if the GB limitation was sufficient; and

- d. PCG's fixed pricing proposal was \$250,000 less than that of Excent, yet each of the evaluators scored PCG lower on Phase 1, Criteria 2 than each did Excent.

5. Phase 1: Criteria 3 Qualifications/References

- a. PCG provided the names and contact information of three (3) references—the New Hampshire Department of Education, the Indiana Department of Education, and the Tennessee Department of Education (each of which contracts with PCG to provide state wide IEP services—as part of its proposal. The only “reference” evaluators appear to have been given was the NC DE (North Carolina Department of Public Instruction, which was: 1) NOT a reference provided by PCG; 2) not an entity for which PCG has been engaged to performed work; and 3) is a direct competitor to PCG. The evaluators’ reliance on the NC DE “reference” is arbitrary, capricious and clearly erroneous.
- b. The RFP requires that the references be submitted by the offeror. By relying on a “reference” not provided by PCG, the evaluation committee’s decision violated the terms of the RFP and is contrary to law;
- c. On information and belief, the State did not contact the references that were provided by PCG. Alternatively, if the State contacted the references provided by PCG, the evaluation committee members were not provided with those references or they impermissibly ignored the same;
- d. The evaluators knew or should have known that the reference each relied on to determine the scoring in Phase 1, Criteria 3 was not a reference submitted by PCG nor was it an entity that PCG had performed work for. For example:
 - i. One evaluator stated reference could not answer many questions since not applicable to PCG; and
 - ii. Reference indicated it did not work directly with PCG.
- e. PCG provided, as part of its proposal, a reference letter for each of its South Carolina customers. Not a single evaluator made reference to the South Carolina reference letters included as part of the PCG proposal. Either the evaluation committee arbitrarily and capriciously neglected to rely on these references, or they were not provided to the evaluation committee for review.

EXCENT'S PROPOSAL IS NON-RESPONSIVE

6. Excent's proposal is non-responsive to the essential requirements (Reg. 19-445.2070) and may not be waived pursuant to S.C. Code Ann. § 11-35-1520(13) and Reg. 19-445-2095(E). Each of the grounds in paragraphs 7 through 8 below are incorporated herein.
7. Amendment 2, questions 2 and 3 provided the estimated total number of staff members that will be using the system stating that up to 60 SCDE staff and a minimum of 168 and a maximum of 672 LEA staff will have to be trained on the system. Excent's proposal, page 69, provides that the maximum number of persons trained for purposes of the pricing proposal is 96. This number is significantly less than the minimum number of 168 LEA staff that the RFP requires. The cost of providing training to meet the minimum number of training sessions required by the RFP has more than negligible or trivial effect on the price, quality or delivery of services required by the RFP and cannot be waived as a minor informality or irregularity.
8. Section 3.1.6 of the RFP requires: "The successful offeror must work with the current vendor to migrate data from the old solution to the new one. The data includes placement history and IEP's housed in the current solution." In its proposal, Excent limited the amount of data that it would migrate from the old solution to the new solution. On page 24 Excent limited the data that it proposes to migrate to the new system when it offered: "The purpose of Data Conversion is to seed Enrich Special Education with the critical information such as the most current dates for IEP, evaluation, services, LRE and consents, as well as the disability(s) for which the student met the state requirements. All required data fields to seamlessly (sic) continue state reporting activities are also included in the transfer." Excent's limitation of the data to be migrated in contravention of the requirement that all of the old system data be migrated to the new system has more than a negligible or trivial effect on the price, quality or delivery of services required by the RFP and cannot be waived as a minor irregularity or informality.
9. The award to Excent is in violation of the purposes of the South Carolina Consolidated Procurement Code.

Based upon the arbitrary, capricious, clearly erroneous and contrary to law scoring and ranking in its totality, the CPO should grant PCG's protest, the award to Excent should be revoked and the SCDE should resolicit the RFP for "Individual Education Program Case Management." Additionally or alternatively, Excent's proposal is not responsive to the essential requirements of the RFP, the award to Excent should be revoked and the SCDE should resolicit the RFP for "Individual Education Program Case Management." Please do not hesitate to contact me if there are any questions regarding this protest.

With best wishes for a happy and safe holiday season.

Yours very truly,

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Andrew Bonnell
MEC:df

Cc: Amy Smith, Manager—via e-mail
Agnes Copeland—via e-mail (ACOPELA@itmo.sc.gov)
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